



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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700 Thirteenth Street, NW, Suite 600  
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**MAR 29 2016**

RE: MUR 6792  
Hudson Valley Economic Development  
Corporation

Dear Mr. Elias and Ms. Friedman:

On March 11, 2014, the Federal Election Commission (the "Commission") notified your client, Hudson Valley Economic Development Corporation, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information provided by you on behalf of your client, the Commission, on March 15, 2014, found that there is no reason to believe Hudson Valley Economic Development Corporation made an in-kind contribution as a result of a coordinated communication in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 109.21. However, on that same date, the Commission found that there is reason to believe Hudson Valley Economic Development Corporation made a prohibited in-kind corporate contribution to Sean Eldridge for Congress in violation of 52 U.S.C. § 30118(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General

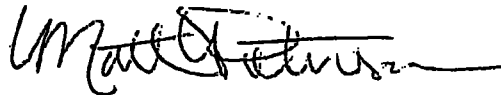
Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Matthew S. Petersen  
Chairman

Enclosure  
Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

## FEDERAL ELECTION COMMISSION

**RESPONDENT:** Hudson Valley Economic Development  
Corporation

**MUR 6792**

### FACTUAL AND LEGAL ANALYSIS

#### I. INTRODUCTION

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This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by Maria Kelso, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The allegations concern whether congressional candidate Sean Eldridge used video footage belonging to a corporation without charge, resulting in the receipt of an in-kind contribution. The Complaint alleges that Eldridge aired a campaign ad containing footage that the Hudson Valley Economic Development Corporation ("HVEDC") created and used in its own advertisement, resulting in a prohibited in-kind corporate contribution to Eldridge's authorized committee, Sean Eldridge for Congress and Michael Oates in his official capacity as treasurer (the "Committee"), in violation of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). The Complaint also alleges that, if the original HVEDC video was produced for the purpose of creating footage for Eldridge, then the original video should be viewed as a coordinated expenditure made on behalf of Eldridge.

Respondent argues that the footage used in the campaign ad was not identical to the footage featured in the HVEDC ad, and that in any event, HVEDC's footage was publicly available and comprised only a small portion of Eldridge's campaign ad, thus making any violation of the Act *de minimis*. Respondent does not state how the Committee obtained the

<sup>1</sup> See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

footage, however, and the circumstances indicate that the footage was not downloaded from a publicly-available source.

The record before the Commission suggests that the Committee used video footage in a campaign ad that a corporate entity created and funded. There is no indication that the Committee paid for that footage, and the Respondent makes no such claim. As such, the Commission finds reason to believe that HVEDC made a prohibited corporate contribution to the Committee. As to the coordination claim, it appears that the original video footage was created for an ongoing business venture and used in an advertisement that does not satisfy the Commission's coordination regulation. The Commission finds no reason to believe that HVEDC made an in-kind contribution as a result of a coordinated communication.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Sean Eldridge was a candidate for Congress in the 2014 general election for New York's Nineteenth Congressional District. He filed his Statement of Candidacy with the Commission on February 1, 2013, but did not launch his campaign until September 2013.<sup>2</sup> On September 22, 2013, Eldridge released a campaign video titled "Why I'm Running."<sup>3</sup> The campaign ad is two minutes and forty-eight seconds long and covers Eldridge's family background, work, qualifications, and reasons why he is running for Congress. The Committee disclosed a disbursement in the amount of \$67,450 made to SKDKnickerbocker, LLC for "Media Production

<sup>2</sup> Ariel Zangala, *Sean Eldridge Launches Bid for 19th Congressional District (with video)*, DAILY FREEMAN (Sept. 23, 2013), <http://www.dailyfreeman.com/general-news/20130923/sean-eldridge-launches-bid-for-19th-congressional-district-seat-with-video> (indicating that Eldridge "launched his long-rumored campaign with a video on his website . . . and issued a press release about his run").

<sup>3</sup> See *Why I'm Running*, <http://www.youtube.com/watch?v=FKsq4d889lk> (Sept. 22, 2013).

Services" on October 2, 2013 in its 2013 Year End Report filed with the Commission, presumably related to the "Why I'm Running" ad.<sup>4</sup>

Eldridge is also a businessman and founder of Hudson River Ventures, LLC, a company that invests in small businesses in the Hudson Valley area of New York State.<sup>5</sup> HVEDC is a non-profit corporation specializing in assisting businesses with relocating to the Hudson Valley area by providing market data, property site information, and other services.<sup>6</sup> Eldridge sits on the board of directors for HVEDC.<sup>7</sup> It also appears that Michael Oates, the Committee treasurer, was the previous President and CEO of HVEDC before moving to Hudson River Ventures, LLC in February 2013.<sup>8</sup> Laurence Gottlieb now serves as HVEDC's President and CEO.<sup>9</sup> Footage of Gottlieb speaking to the camera in both the campaign and HVEDC advertisements is central to the claims raised in this MUR.

On May 30, 2013, HVEDC published an ad entitled "Hudson Valley 3D Printing Announcement" discussing the launch of a 3D printing initiative called the "Hudson Valley

<sup>4</sup> Thus far, the Committee has also made disbursements totaling \$75,252 to the same firm for "media consulting services" from March 2013 through June 2014.

<sup>5</sup> See <http://www.hudsonriverventures.com/>.

<sup>6</sup> See [http://www.hvedc.com/webpages/about\\_us\\_over.aspx](http://www.hvedc.com/webpages/about_us_over.aspx) (last visited Sept. 16, 2014); NYS DEPT. OF STATE, [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html) (search for "Hudson Valley Economic Development Corporation").

<sup>7</sup> See [http://www.hvedc.com/webpages/about\\_us\\_board.aspx](http://www.hvedc.com/webpages/about_us_board.aspx).

<sup>8</sup> *HVEDC's Mike Oates Moving on the New Venture* (Jan. 7, 2013), [http://www.hvedc.com/webpages/about\\_us\\_Mike\\_Oates\\_Press.aspx](http://www.hvedc.com/webpages/about_us_Mike_Oates_Press.aspx). Oates is now CEO of Hudson River Ventures. See *Michael Oates, Executive Profile*, BLOOMBERG BUSINESSWEEK, <http://investing.businessweek.com/research/stocks/private/person.asp?personId=225953374&privcapId=225952619&previousCapId=225952619&previousTitle=Hudson%20River%20Ventures,%20LLC>.

<sup>9</sup> See *HVEDC Names Gottlieb as New President, CEO* (Feb. 6, 2013), [http://www.hvedc.com/webpages/about\\_us\\_Gottlieb\\_appointment.aspx](http://www.hvedc.com/webpages/about_us_Gottlieb_appointment.aspx).

Advanced Manufacturing Center at SUNY New Paltz” that involves a partnership between private businesses and government groups.<sup>10</sup> Eldridge is one of those partners, providing funding in the amount of \$250,000 for the project along with committing an additional \$500,000 in investments for local businesses, and is also one of the featured speakers in the ad.<sup>11</sup> In fact, Eldridge had a prominent role in the ad as he is the first speaker to appear in the ad announcing the initiative and the final speaker closing out the ad. The HVEDC ad features additional speakers, including Gottlieb, and displays images of 3D manufacturing equipment.<sup>12</sup>

The footage of Gottlieb at issue comprises approximately 17-31 seconds of audio and video material that appears in some combination in both ads, featured in the campaign ad from 1:36 to 1:53 and in the HVEDC ad from 1:40 to 2:11. In both ads, that footage shows Gottlieb speaking to the camera, wearing the same clothing and making the same statement. Nonetheless, that footage also differs in a manner suggesting that the Committee had access to non-public HVEDC footage. In both ads, Gottlieb states that “we are proud that we are able to pull together a dream team of economic development professionals and organizations: Sean Eldridge, Central Hudson, SUNY New Paltz . . . .”<sup>13</sup> But the campaign ad shows Gottlieb on screen speaking to the camera for the duration of his statement. By contrast, the earlier HVEDC ad cuts to video footage of 3D printing machinery while Gottlieb’s voice completes the statement. Because the

<sup>10</sup> *Hudson Valley 3D Printing Announcement*, <http://www.youtube.com/watch?v=zch0hfomHlo> (May 30, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See Why I’m Running*, <http://www.youtube.com/watch?v=FKsq4d889lk> (Sept. 22, 2013); *Hudson Valley 3D Printing Announcement*, <http://www.youtube.com/watch?v=zch0hfomHlo> (May 30, 2013).

extended video footage of Gottlieb making the same statement in the same clothing does not appear in the publicly-available HVEDC ad — footage that does not appear to be otherwise publicly available — the Committee evidently obtained that footage from another source.<sup>14</sup>

In its Response, HVEDC states that the Complaint fails to establish that the HVEDC and campaign ads used the same footage and asserts that the footage at issue in both ads differs.<sup>15</sup> HVEDC further contends that even if the footage were identical, it was freely available to the public and constitutes only a small part of the campaign ad and therefore does not violate the Act.<sup>16</sup> The response does not identify where the Committee obtained the footage or if that source was publicly available. Nor does it state the cost to produce the footage or whether the Committee paid for its use. The Response of HVEDC nonetheless acknowledges that the Complaint “correctly point[s] out that the video ‘is clearly the property of HVEDC’ and ‘is used to promote a project of HVEDC.’”<sup>17</sup> The Committee’s reports filed with the Commission do not disclose any payment to HVEDC.

## **B. Legal Analysis**

The Complaint alleges that the use of the HVEDC footage in the Eldridge ad resulted in a prohibited in-kind corporate contribution. Corporations are prohibited from making a

<sup>14</sup> Similarly, Gottlieb’s statement that “[w]e see 3D printing as being an exciting technology with so many applications” is used in both ads, but the HVEDC ad features Gottlieb making part of this statement while he is on screen. The campaign ad, however, features only the audio portion of this statement while images of 3D manufacturing equipment are shown on the screen. Although this variance does not necessarily indicate that the Committee obtained non-public video footage of 3D printing machinery from HVEDC, given the footage of Gottlieb it is possible that HVEDC was the source of that video footage as well.

<sup>15</sup> HVEDC Resp. at 2 (May 1, 2014).

<sup>16</sup> HVEDC Resp. at 2-3.

<sup>17</sup> HVEDC Resp. at 3.

contribution to a candidate's committee in connection with a federal election, and candidates are prohibited from knowingly accepting or receiving a prohibited contribution.<sup>18</sup> A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>19</sup> "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge.<sup>20</sup> The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution."<sup>21</sup> The Commission analyzes video footage as a thing of value and will determine whether there is a resulting contribution based on an examination on whether transfer of that footage was conducted under current market practices or whether payment was made at the usual and normal charges.<sup>22</sup>

As a not-for-profit entity incorporated in the State of New York, HVEDC is prohibited from making contributions to candidates for federal office. If HVEDC provided the footage to the Committee for its use at something less than the usual and normal charge, then HVEDC may have made a prohibited corporate contribution to the Committee.

<sup>18</sup> See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b (a)); 11 C.F.R. § 114.2(b)(1).

<sup>19</sup> 52 U.S.C. § 30101 (8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); 11 C.F.R. § 100.52(a); see also 52 U.S.C. § 30118(b)(2) (formerly 2 U.S.C. § 441b(b)(2)) (adding that contribution or expenditure includes any direct or indirect payment . . . gift or money, or any services, or anything of value").

<sup>20</sup> See 11 C.F.R. § 100.52(d)(1).

<sup>21</sup> *Id.* § 100.52(d)(2)

<sup>22</sup> See, e.g., First Gen. Counsel's Rpt. at 7-8 and Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress) (analyzing video footage as a campaign asset and thing of value requiring payment at the usual and normal charge); Factual and Legal Analysis ("F&LA") at 10-11, MUR 6218 (Ball4NY) (analyzing video footage as a campaign asset that would have value).



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HVEDC acknowledges that it is the owner of the footage in the original HVEDC ad. Respondent nevertheless argues that this matter should be dismissed because the footage at issue was "freely available" and could have been obtained from a publicly available source.<sup>23</sup> But the Respondent does not state where the Committee obtained the footage — it merely asserts that *if* the footage was obtained from a publicly available source, its use was permissible. Here, only the first portion of the video footage of Gottlieb featured in the campaign's ad appears in the earlier HVEDC ad, and no other known public source contains the campaign ad's more extensive version of that same recording. Accordingly, it appears that the Committee had access to the same raw footage that HVEDC used to create its earlier ad and that that footage likely was not obtained from the public domain.

The Commission previously has addressed matters involving the transfer of film footage to political committees. Where, as here, the footage was not otherwise available for public use generally, the Commission has focused its analysis on whether the transaction involved an appropriate payment for the assets. In MUR 6218 (Ball4NY), for example, the Commission found no reason to believe that the transfer of videos and photographs between a non-federal campaign and a federal committee constitute a transfer of assets because the respondents showed that the videos were publicly available and that the committee had paid to use the photographs.<sup>24</sup>

<sup>23</sup> Respondent argues that this matter should be treated like republication cases where the Commission has dismissed allegations involving the use of campaign materials obtained from a publicly available source. *See, e.g.*, MUR 5743 (Betty Sutton) (Commission admonished a committee after determining that a republished candidate photo was incidental and likely had *de minimis* value); MUR 5996 (Tim Bee) (Commission exercised prosecutorial discretion to dismiss the allegation that a group republished photo of a candidate that comprised two seconds of a 30 second ad and was downloaded at no charge from candidate's publicly available website). Unlike those matters, however, the facts here do not involve the dissemination, distribution, or republication of materials produced by a campaign. *See* 11 C.F.R. § 109.23. Instead, the video footage at issue here was produced and distributed by a private entity and subsequently used by a campaign committee.

<sup>24</sup> *See* F&LA at 10-11, MUR 6218 (Ball4NY).

Similarly, in MUR 5964 (Schock for Congress), the Commission ultimately dismissed the matter because the committee provided a contract and invoice documenting the cost of the footage and other information sufficient to conclude that the amount the committee paid was reasonable such that further investigation would be unwarranted.<sup>25</sup>

Unlike those MURs, the record here suggests that the Committee likely obtained the footage from HVEDC, a private corporation, and there is no indication that the Committee paid a usual and normal charge for it. Moreover, Eldridge's dual roles as the candidate and a principal of HVEDC and the similar dual roles of the Committee treasurer further reasonably suggest that the Committee may have obtained the footage for its use directly from HVEDC without payment.

In addition, the Commission finds unpersuasive — at least at present — the view that the additional footage in the campaign ad constitutes a *de minimis* variation from similar publicly-available source material, therefore warranting dismissal even if it were obtained for free from a private source. Certainly, the publicly available HVEDC ad features the same audio and all but a few seconds of the same video used in the campaign ad. While the final Committee ad used less than thirty seconds of the HVEDC ad, it would be premature to conclude that the Committee was not given access to more HVEDC footage than ultimately was used in the final product, itself a benefit in the production process. Indeed, as discussed above, in addition to the extended Gottlieb video clip, the campaign ad also featured footage of 3D manufacturing equipment that does not appear in the HVEDC ad, which together with the Gottlieb footage reasonably suggests that the Committee may have had access to a larger quantity of footage from HVEDC or its

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<sup>25</sup> Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2-3, MUR 5964 (Schock for Congress).

agents. Moreover, the overall cost of the Committee's ad appears to have been substantial even without paying for the footage at issue — Commission disclosure reports reflect that the Committee may have spent \$67,450 to produce the campaign ad, but there is no information in the record regarding the value of the HVEDC footage.<sup>26</sup> Thus, although it appears that the Committee received access to footage and did not reimburse its source, further investigation is necessary to determine the full scope of that benefit, information necessary to the Commission's informed decision concerning the appropriate exercise of its prosecutorial discretion in this matter.<sup>27</sup>

Therefore, the Commission finds reason to believe that HVEDC made a prohibited corporate contribution to the Committee in violation of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).

The Complaint also alleges that the original HVEDC ad may have been made for the purpose of creating footage for Eldridge's campaign and therefore constituted a coordinated expenditure between HVEDC and the Committee and an in-kind contribution to the

<sup>26</sup> For this reason, prior matters in which the Commission has dismissed similar allegations as *de minimis* do not apply here without more information concerning the value of the footage, if any, that was actually transferred to the Committee for its use in producing the campaign ad. See First Gen. Counsel's Rpt. at 4 and Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2-3, MUR 5964 (reflecting dismissal as *de minimis* premised on documentation indicating \$750 cost of footage); F&LA at 7-10, MUR 6542 (Mullin for Congress) (dismissing prohibited corporate contribution allegation in connection with the use of a business name, facilities, vehicles and employees in a committee's ads based as *de minimis* where campaign asserted that the value of the contribution was \$1,425 and cost had been reimbursed).

<sup>27</sup> This matter is therefore unlike other cases involving the transfer of video footage that the Commission has dismissed at the reason to believe stage where the record included information competent to determine how the footage was obtained and whether it was in fact publicly available. See, e.g., First Gen. Counsel's Rpt. at 4-5; MUR 6514 (Make Us Great Again) (respondents provided sworn affidavits asserting that the footage was made available on its website and was publicly posted on YouTube and the committee stated that it independently obtained the footage from YouTube).

Committee.<sup>28</sup> Under 11 C.F.R. § 109.21(a), a communication is coordinated with a candidate, a candidate's authorized committee, or agent of the candidate or committee when the communication: (1) is paid for by a person other than that candidate or authorized committee; (2) satisfies at least one of the content standards set forth in 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards set forth in 11 C.F.R. § 109.21(d).

Here, the HVEDC ad fails to satisfy the content prong of the coordination regulations.<sup>29</sup> The content prong is satisfied if the communication at issue meets at least one of four content standards: (1) an electioneering communication; (2) a public communication that republishes campaign materials; (3) a public communication that contains express advocacy; or (4) a public communication that refers to a clearly identified candidate for federal office or political party that is distributed in that jurisdiction within either 90 or 120 days of an election.<sup>30</sup> Neither the electioneering communications nor the 90-day pre-election public communications standard is implicated because the HVEDC ad aired more than a year before the June 24, 2014 primary election.<sup>31</sup> Further, the HVEDC ad does not appear to republish campaign materials and does not expressly advocate Eldridge's election.

The HVEDC ad does not satisfy the elements of the Commission's coordinated communication test and the Commission finds no reason to believe that the HVEDC ad constituted a coordinated expenditure.

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<sup>28</sup> Compl. at 3.

<sup>29</sup> 11 C.F.R. § 109.21(c).

<sup>30</sup> *Id.*

<sup>31</sup> See 11 C.F.R. § 109.21(c)(1), (4).